

**PHILIPPINE ASSOCIATION OF FREE LABOR UNIONS (PAFLU),
PETITIONER, VS. BUREAU OF LABOR RELATIONS, HONORABLE
CARMELO C. NORIEL, NATIONAL FEDERATION OF FREE LABOR
UNIONS (NAFLU), AN...**

G.R. No. L-43760. August 21, 1976

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

A certification by respondent Director of Labor Relations, Carmelo C. Noriel, that respondent National Federation of Free Labor Unions (NAFLU) as the exclusive bargaining agent of all the employees in the Philippine Blooming Mills, Company, Inc. disregarding the objection raised by petitioner, the Philippine Association of Free Labor Unions (PAFLU), is assailed in this certiorari proceeding. Admittedly, in the certification election held on February 27, 1976, respondent Union obtained 429 votes as against 414 of petitioner Union. Again, admittedly, under the Rules and Regulations implementing the present Labor Code, a majority of the valid votes cast suffices for certification of the victorious labor union as the sole and exclusive bargaining agent.[1] There were four votes cast by employees who did not want any union.[2] On its face therefore, respondent Union ought to have been certified in accordance with the above applicable rule. Petitioner, undeterred, would seize upon the doctrine announced in the case of *Allied Workers Association of the Philippines v. Court of Industrial Relations*[3] that spoiled ballots should be counted in determining the valid votes cast. Considering that there were seventeen spoiled ballots, it is the submission that there was a grave abuse of discretion on the part of respondent Director. Implicit in the comment of respondent Director of Labor Relations,[4] considered as an answer, is the controlling weight to be accorded the implementing rule above-cited, no inconsistency being shown between such rule and the present Labor Code. Under such a view, the ruling in the *Allied Workers Association* case that arose during the period when it was the Industrial Peace Act[5] that was in effect and not the present law, no longer possesses relevance. It cannot and should not be applied. It is not controlling. There was no abuse of discretion then, much less a grave one.

This Court is in agreement. The law is on the side of respondent Director, not to mention the decisive fact appearing in the petition itself that at most, only ten of the spoiled ballots "were intended for the petitioner Union,"[6] thus rendering clear that it would on its own showing obtain only 424 votes as against 429 for respondent Union. Certiorari does not lie.

1. What is of the essence of the certification process, as noted in *Lakas Ng Manggagawang Pilipino v. Benguet Consolidated, Inc.*[7] "is that every labor organization be given the opportunity in a free and honest election to make good its claim that it should be the exclusive collective bargaining representative." [8] Petitioner cannot complain. It was given that opportunity. It lost in a fair election. It came out second best. The implementing rule favors, as it should, respondent Union. It obtained a majority of the valid votes cast. So our law prescribes. It is equally the case in the United States as this excerpt from the work of Cox and Bok makes clear: "It is a well-settled rule that a representative will be certified even though less than a majority of all the employees in the

unit cast ballots in favor of the union. It is enough that the union be designated by a majority of the valid ballots, and this is so even though only a small proportion of the eligible voters participates. Following the analogy of political elections, the courts have approved this practice of the Board."[9]

2. There is this policy consideration. The country is at present embarked on a wide-scale industrialization project. As a matter of fact, respondent firm is engaged in such activity. Industrialization, as noted by Professor Smith, Merrifield and Rothschild, "can thrive only as there is developed a stable structure of law and order in the productive sector." [10] That objective is best attained in a collective bargaining regime, which is a manifestation of industrial democracy at work, if there be no undue obstacles placed in the way of the choice of a bargaining representative. To insist on the absolute majority where there are various unions and where the possibility of invalid ballots may not be ruled out, would be to frustrate that goal. For the probability of a long drawn-out, protracted process is not easy to dismiss. That is not unlikely given the intensity of rivalry among unions capable of enlisting the allegiance of a group of workers. It is to avoid such a contingency that there is this explicit pronouncement in the implementing rule. It speaks categorically. It must be obeyed. That was what respondent Director did.

3. Nor can fault of a grave and serious character be imputed to respondent Director presumably because of failure to abide by the doctrine or pronouncement of this Court in the aforesaid Allied Workers Association case. The reliance is on this excerpt from the opinion: "However, spoiled ballots, i.e., those which are defaced, torn or marked (Rules for Certification Elections, Rule II, sec. 2[j]) should be counted in determining the majority since they are nevertheless votes cast by those who are qualified to do so." [11] Nothing can be clearer than that its basis is a paragraph in a section of the then applicable rules for certification elections. [12] They were promulgated under the authority of the then prevailing Industrial Peace Act. [13] That Legislation is no longer in force, having been superseded by the present Labor Code which took effect on November 1, 1974. This certification election is governed therefore, as was made clear, by the present Labor Code and the Rules issued thereunder. Absent a showing that such rules and regulations are violative of the Code, this Court cannot ignore their existence. When, as should be the case, a public official acts in accordance with a norm therein contained, no infraction of the law is committed. Respondent Director did, as he ought to, comply with its terms. He took into consideration only the "valid votes" as was required by the Rules. He had no choice as long as they remain in force. On a proper showing, the judiciary can nullify any rule if found in conflict with the governing statute. [14] That was not even attempted here. All that petitioner did was to set forth in two separate paragraphs the applicable rule followed by respondent Director [15] and the governing article. [16] It did not even bother to discuss why such rule was in conflict with the present Labor Code. It failed to point out any repugnancy. Such being the case, respondent Director must be upheld.

4. The conclusion reached by us derives further support from the deservedly high reputation attached to the construction placed by the executive officials entrusted with the responsibility of applying a statute. The Rules and Regulations implementing the present Labor Code were issued by Secretary Bias Ople of the Department of Labor and took effect on February 3, 1975, the present Labor Code having been made known to the public as far back as May 1, 1974, although its date of effectivity was postponed to November 1, 1974. It would appear then that there was more than enough time for a really serious and careful study of such supplementary rules and regulations to avoid any inconsistency with the Code. This Court certainly cannot ignore the interpretation thereafter embodied in the Rules. As far back as *In re Allen*, [17] a 1903 decision, Justice McDonough, as ponente, cited this excerpt from the leading American case of *Pennoyer v. McConaughy*, decided in 1891: "The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisprudence that no authorities need be cited to support it." [18] There was a

paraphrase by Justice Malcolm of such a pronouncement in *Molina v. Rafferty*, [19] a 1918 decision: "Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby." [20] Since then, such a doctrine has been reiterated in numerous decisions. [21] As was emphasized by Chief Justice Castro, "the construction placed by [the office charged with implementing and enforcing the provisions of a Code] should be given controlling weight." [22]

WHEREFORE, the petition for certiorari is dismissed. Costs against petitioner Philippine Association of Free Labor Unions (PAFLU).

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Rule 6 of the Rules and Regulations implementing the Labor Code of the Philippines, Section 8, subsection (f), reads as follows: "The union which obtained majority of the valid votes cast by the eligible voters shall be certified as the sole and exclusive bargaining agent of all the workers in the appropriate unit. However, in order to have a valid election, at least fifty-one percent of all eligible voters in the appropriate bargaining unit shall have cast their votes."

[2] Another labor union, PLAC, obtained a zero vote.

[3] L-22580 and 22950, June 6, 1967, 20 SCRA 364.

[4] The comment was submitted by Assistant Solicitor General Reynato S. Puno, assisted by Solicitor Jesus V. Diaz.

[5] Republic Act No. 875 (1953).

[6] As set forth in that portion of the petition labeled Statement of the Case: "c) Petitioner appealed from the certification * * *, calling attention to the fact that such certification contravenes the provision of the law (Art. 256, Labor Code); that the seventeen (17) spoiled ballots should be taken into account in considering the majority, especially so that out of the 17 spoiled ballots ten (10) were intended for the petitioner; * * *." Petition, 3-4.

[7] L-35075, November 24, 1972, 48 SCRA 169.

[8] Ibid. Cf. *United Employees Union v. Noriel*, L-40810, Oct. 3, 1975, 67 SCRA 267; *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*, L-42115, Jan. 27, 1976, 69 SCRA 132; *Federacion Obrera v. Noriel*, L-41937, July 6, 1976.

[9] *Cox and Bok*, Labor Law, Seventh Ed., 373 (1969), citing *New York Handkerchief Mfg. Co. v. NLRB*, 114 F. 2d 144 (7th Cir., 1940), certiorari denied 311 U.S. 704, 61 S. Ct. 170, 85 L. Ed. 457 (1941) and *Virginian Ry. Co. v. System Federation No. 40*, 300 US 515, 57 S. Ct. 592, 81 L. Ed 789 (1937).

[10] Smith, Merrifield, Rothschild, *Collective Bargaining and Labor Arbitration* 13 (1970).

[11] L-22580 and 22950, 20 SCRA 364, 369.

[12] It is regrettable that quotation marks were used in the petition and yet no indication is made that this pronouncement is in accordance with the rules for certification election. It certainly could not have been the intention of counsel for petitioners, but such an omission possibly may give rise to a misinterpretation as to their motive. They are well-advised to take a little more care next time in the filing and preparation of pleadings to

assure accuracy.

[13] Republic Act No. 875 (1953).

[14] Cf. *Teoxon v. Member of the Board of Administrators*, L-25619, June 30, 1970, 33 SCRA 585.

[15] Rule 6, Section 8, Subsection (f).

[16] Art. 256 of the Labor Code.

[17] 2 Phil. 630.

[18] *Ibid.*, 640. *Pennoyer v. McConnaughy* is cited in 140 US 1. The excerpt is on p. 23 thereof. Cf. *Government v. Municipality of Binalonan*, 32 Phil. 634 (1915).

[19] 37 Phil. 545.

[20] *Ibid.*, 555.

[21] Cf. *Madrigal v. Rafferty*, 38 Phil. 414 (1918); *Philippine Sugar Centrals Agency v. Insular Collector*, 51 Phil. 131 (1927); *Yra v. Abaño*, 52 Phil. 380 (1928); *Guanio v. Fernandez*, 55 Phil. 814 (1931); *People v. Hernandez*, 59 Phil. 272 (1933); *Ortua v. Singson Encarnacion*, 59 Phil. 440 (1934); *Regalado v. Yulo*, 61 Phil. 173 (1935); *Bengzon v. Secretary of Justice*, 62 Phil. 912 (1936); *Director of Lands v. Abaya*, 63 Phil. 559 (1936); *Everett v. Bautista*, 69 Phil. 137 (1939); *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Manantan v. Municipality of Luna*, 82 Phil. 844 (1949); *Tamayo v. Manila Hotel Co.*, 101 Phil. 811 (1975); *Tan v. Municipality of Pagbilao*, L-14264, April 30, 1963, 7 SCRA 887; *Asturias Sugar Central v. Commissioner of Customs*, L-19337, Sept. 30, 1969, 29 SCRA 617; *University of the Philippines v. Court of Appeals*, L-28153, Jan. 28, 1971, 37 SCRA 64; *Orencia v. Enrile*, L-28887, Feb. 22, 1974, 55 SCRA 580. The latest case in point is *Sarmiento v. Nolasco*, L-38565, Nov. 15, 1974, 61 SCRA 80.

[22] *Asturias Sugar Central, Inc. v. Commissioner of Customs*, L-19337, Sept. 30, 1969, 29 SCRA 617, 623. The words placed in the bracket likewise come from that portion of the opinion of the then Justice Castro, but the Code in question is the Tariff and Customs Code. It should be obvious that such a principle applies as well to the present Labor Code.

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